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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 DELBERT SWOPE,

No. CIV S-03-2531-DFL-CMK

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 COMMISSIONER OF SOCIAL
15 SECURITY,

16 Defendant.
17 _____/

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19 Plaintiff, who is proceeding with retained counsel, brings this action for judicial
20 review of a final decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g).
21 On December 12, 2003, the court issued a scheduling order which required plaintiff to file and
22 serve a motion for judgment on the pleadings and transcripts within 60 days of the date of service
23 of the defendant's answer. The record reflects that defendant's answer was served and filed on
24 July 14, 2004. On September 9, 2005, the court directed plaintiff to show cause in writing within
25 20 days why this action should not be dismissed for lack of prosecution and failure to comply
26 with court order. Plaintiff has not responded to the order to show cause.

1 The court must weigh five factors before imposing the harsh sanction of dismissal.
2 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
3 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
4 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
5 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
6 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
7 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
8 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
9 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
10 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
11 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules.
12 See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam).

13 Having considered these factors, and in light of plaintiff's failure to prosecute this
14 action in compliance with court rules and orders, the court finds that dismissal is appropriate.

15 Based on the foregoing, the undersigned recommends that this action be dismissed.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
18 after being served with these findings and recommendations, any party may file written objections
19 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
20 and Recommendations." Failure to file objections within the specified time may waive the right
21 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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23 DATED: October 19, 2005.

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26 **CRAIG M. KELLISON**
UNITED STATES MAGISTRATE JUDGE

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